***THE HONBLE Ms. JUSTICE G.ROHINI**

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+WRIT PETITION Nos.11315, 11319 AND

11345 OF 2006

%Dated 13/06/2006

W.P.No.11315 of 2006:

–

E. Narasimha … Petitioner

And

$ **1.** The Commissioner of Prohibition & Excise,

Govt. of A.P., Hyderabad, and 2 others. …Respondents

W.P.No.11319 of 2006

Dubbaka Satish Reddy … Petitioner

And

$ **1.** The Commissioner of Prohibition & Excise,

Govt. of A.P., Hyderabad, and 2 others. Respondents

In W.P.No.11345 of 2006 :

–

#Kallem Narasimha … Petitioner

And

$ **1.** The Commissioner of Prohibition & Excise,

Govt. of A.P., Hyderabad, and 2 others. ..Respondents

! Counsel for Petitioner: Sri E.V. Bhagidhara Rao

^Counsel for Respondents: G.P. for Prohibition & Excise

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> HEAD NOTE:

? Cases referred

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.11315, 11319 AND

11345 OF 2006

Dated: 13th June, 2006.

In W.P.No.11315 of 2006 :

Between :

E. Narasimha … Petitioner

And

1. The Commissioner of Prohibition & Excise,

   Govt. of A.P., Hyderabad, and 2 others. …Respondents

In W.P.No.11319 of 2006 :

Between :

Dubbaka Satish Reddy … Petitioner

And

1. The Commissioner of Prohibition & Excise,

   Govt. of A.P., Hyderabad, and 2 others. …Respondents

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In W.P.No.11345 of 2006 :

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Between :

Kallem Narasimha … Petitioner

And

1. The Commissioner of Prohibition & Excise,

   Govt. of A.P., Hyderabad, and 2 others. …Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.11315, 11319 AND

11345 OF 2006

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COMMON ORDER :

Since common questions of fact and law arise for consideration, these three writ petitions are heard together and decided by this common order.

The District Collector and the Auctioning Authority, Nalgonda (Respondent No.3 in all the writ petitions) issued Notification dated 27-5-2006 under Rule 5 of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules') inviting sealed tenders for grant of lease of right for the sale of Indian Liquor and Foreign Liquor by shop in Nalgonda district for the lease period from 1-7-2006 to 30-6-2008. The said auction notice includes the shops in Chityal town, Nalgonda Mandal. The petitioners herein submitted their tenders for the shops in Chityal namely Shop No.1 (Ward No.8), Shop No.5 (Ward No.1) and Shop No.3 (Ward No.9) respectively. As per the notification, the upset prices for the above said three shops were fixed as Rs.15,98,921/-, Rs.14,65,411/- and Rs.14,00,665/- respectively. The tenders were opened on 3-6-2006 by the third respondent and it is not in dispute that the three petitioners herein who had offered Rs.20,20,200/-, Rs.19,99,999/- and Rs.18,99,999/- in respect of the Shop Nos.1, 3 and 5 respectively were found to be the highest bidders. It is pleaded that the petitioners were ready and willing to fulfill all the terms and conditions of the auction notice. The grievance of the petitioners is that in spite of the fact that they were found to be the highest bidders, the respondents did not accept their tenders and on the other hand they were contemplating to issue a fresh notification of public auction in respect of the three shops in question. Hence, these writ petitions seeking Writ of Mandamus directing the respondents to enter into a lease agreement with them for the period 2006-08 in respect of Shop Nos.1, 3 and 5 of Chityal respectively contending that the respondents are duty bound to enter into lease agreement with them for the

period 2006-08 since they were admittedly the highest bidders.

The learned Counsel for the petitioners vehemently contended that as per clauses ix, xiv & xv of the Auction Conditions appended to the notification dated 27-5-2006, Auctioning Authority is bound to accept the highest tenders and such highest tenders can be rejected only after recording the reasons for such rejection and communicating such order to the highest bidder. The learned Counsel for the petitioners contends that since no such procedure was followed, it is not open to the respondents to issue any fresh notification ignoring the highest bids made by the petitioners.

The learned Government Pleader for Prohibition & Excise, under instructions, submits that though the bids submitted by the writ petitioners were found to be the highest, the same were rejected by the 3rd respondent after recording reasons and thereafter re-notifications dated 5-6-2006 were issued inviting fresh tenders for five shops in Chityal including the three shops in question i.e., Shop Nos.1, 3 and 5.

The learned Government Pleader has also placed before this Court the relevant record relating to rejection of the tenders under the earlier notification dated 27-5-2006.

In exercise of powers conferred by Section 72 read with Sections 17, 2 and 29 of the A.P. Excise Act, 1968, the Governor of Andhra Pradesh made the Rules called A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 under G.O.Ms.No.998, Revenue (Ex.II) Department, dated 24-5-2005.

As per Rule 3 of the said Rules, grant of lease of right of selling Indian liquor and foreign liquor by shop shall ordinarily be granted by inviting sealed tenders from the public after due notification. Rule 14 of the said Rules in detail provides for submission and finalisation of tenders. Sub-rules (6), (7) & (8) of Rule 14 of the Rules which are relevant for the purpose of the present case may be extracted hereunder :

*"**14. <u>Submission and finalisation of tenders</u>** :-*

(1) ……

(2) ……..

(3) ……

(4) ……..

(5) ……

(6) The auctioning authority shall open the sealed tenders for each shop notified for auction. The highest tender may be accepted if the lease amount offered is higher than the upset price notified for the shop and

Provided that when on the opening of the sealed tenders it is found that two or more tenderers have quoted the same highest amount, the successful auction purchaser among such tenderers shall be selected by drawal of lots:

Provided that if the highest tender is less than the upset price notified, the auctioning authority may provide an opportunity to the highest tenderer to increase his offer to an amount higher than the upset price and accept the offer. If the highest tenderer is not willing to increase his offer to an amount higher than the upset price, the second highest tenderer may be given a similar opportunity. If both the tenderers are not willing to increase the offer to an amount higher than the upset price, all the tenders in respect of that shop shall be rejected and it shall put to re-auction.

Provided that in the case or a person whose tender for a shop is not accepted, the earnest money deposited by him in respect of such tenders shall, if he so desires, be treated as earnest money for other shop at the same auction.

Provided further that if the auctioning authority considers that the auction should be postponed for a future time and date for any reason he may do so without opening the tenders.

Provided also that it shall be open to the auctioning authority to refuse to knock down the auction in favour of the highest tenderer if such authority is satisfied after a perusal of the affidavit that such tenderer cannot reasonably be expected to discharge his/her liabilities in terms of the lease.

Provided also that where the highest tender is not accepted the auctioning authority shall record the reasons thereof.

(7) The auctioning authority, may be order reject any tender on the ground that the tender is of benami in nature or that there is collusion among the tenderers who participated in the auction for the lease of any shop.

(8) After rejecting, the highest tender the auctioning authority may either accept the next highest tender if it is higher than the upset price or

dispose off the shop afresh at any subsequent notified auction as the case may be.

(9) ……"

The above said Rules have also been incorporated by way of auction conditions appended to the auction notice and were made known to all the bidders.

It is true that in the cases on hand the lease amounts offered by the petitioners were higher than the upset prices notified for the respective shops. However, even in such cases, the 5th proviso to sub-rule (6) of Rule 14 empowers the auctioning authority to refuse to accept the auction in favour of the highest tenderer if such authority is satisfied that such tenderer cannot reasonably be expected to discharge his liabilities in terms of lease.

That apart, sub-rule (7) of Rule 14 empowers the auctioning authority to reject any tender on the ground that the tender is of benami in nature or that there is collusion among the tenderers who participated in the auction for the lease of any shop. However for rejection of the highest tender, the auctioning authority shall record the reasons thereof.

Clause-xiv of the tender conditions which summed up the above provisions of sub-rules (6) and (7) of Rule 14 runs as under :

xiv. Occasion for rejection for tender even if it is the highest amount : *(5th and 6th proviso to Rule 14 (6) & rule 14 (7)*

(i) It shall be open to the auctioning authority to refuse to knock down the auction in favour of the highest tenderer if such authority is satisfied after a perusal of the affidavit or on the basis of any other information that such tenderer cannot reasonably be expected to discharge his/her liabilities in terms of the lease.

(ii) The auctioning authority, may by order reject any tender on the ground that the tender is of benami in nature or that there is collusion among the tenderers who participated in the auction for the lease of any shop.

iii. *Where the highest tender is not accepted the auctioning authority shall record the reasons thereof."*

The record pl aced before this Court by the learned Government Pleader shows that after opening the tenders on 3-6-2006 the third respondent having found that a cartel was formed by the existing five licensees of Chityal i.e., the licensees of Shop Nos. 1, 2, 3, 4 and 5 of Chityal for the lease period 2005-06 and particularly the licensee of Shop No.3 for the year 2005-06 by name K. Narasimha (petitioner in W.P.No.11345 of 2006) managed in such a way that the members of his own group filed tenders for the said shops, decided to reject the highest tenders in respect of the shops in question and to invite fresh tenders so as to give free and fair opportunity to all intending bidders. Accordingly, vide Proceedings No.369/2006/C1, dated 3-6-2006 the 3rd respondent passed an order rejecting the highest tenders received in respect of Shop Nos.1, 3 and 5 and the same was communicated to the highest bidders i.e., the writ petitioners through the S.H.O., Nalgonda. In the said order itself, it was recorded that the proceedings of the rejection was announced through mike in the auction hall and that the copies of the said proceedings were displayed on the notice-board of the Collectorate, Nalgonda as well as in the office of Prohibition & Excise Superintendent. The record also shows that they were accordingly fixed on the notice-boards on 3-6-2006 itself. The record produced includes the returned copies of the proceedings sent to the petitioners with an endorsement that they refused to receive the same.

For proper appreciation, the contents of the proceedings dated 3-6-2006 may be extracted hereunder :

PROCEEDINGS OF THE DISTRICT COLLECTOR, NALGONDA.

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Proc.No:369/2006/C1, Dated: 03-06-2006

Present : Shri K. Vijaya Nand, I.A.S.,

Collector & District Magistrate, Nalgona.

Sub: Proh. & Excise-Auction for I.M.F.L. & F.L. shops for the lease period 2006-08 – Tenders filed for Chityala shops No.1, Chityal No.3 and Chityal No.5 – Cartel formed – Tenders Rejected – Reg.-

Ref: 1. Gazette No.120/2006, dated 27-5-2006 of the District

Collector, Nalgonda.

2. Highest tender filed by Sri D. Satish Reddy, S/o.

Narender Reddy, R/o. Nereda for Chityala No.5

Gazette Sl.No.57.

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ORDER :-

There is a reliable information that (5) licensees of Chityala 1, Chityala No.2, Chityala No.3, Chityala No.4 and Chityala No.5 for the lease period 2005-06 functioned as a group, though the licences are in the name of different persons, as the rule does not permit to have more than one shop in the name of one person. There is further reliable information that one Sri K. Narasimha, licensee of Chityala No.3 for the year 2005-2006, managed in such a way that tenders (3, 2, 5) are filed only for Chityala No.1, Chityala No.3 and Chityala No.5 respectively by the members of their own group including himself, leaving Chityala No.2 and Chityala No.4 without any tender. It is also relevant to mention that they have left the highest lease amount shops i.e., Chityala No.2 and Chityala No.4 without any tender. It is also relevant to mention that they have left the highest lease amount shops i.e. Chityala No.2 and Chityala No.4, whose lease amount is Rs.7.32 lakhs and 7.78 lakhs for the year 2005-06 and upset price Rs.16,09,929 and Rs.17,11,109 for the lease period 2006-08 respectively. The percentage increase in the lease amount offered over the upset price for the lease period 2006-08 is nominal like 26% and 36%, whereas the percentage increase of the district is 46%. The reliable information coincided with the facts on record and it is with certainity suspected that Sri K. Narasimha, the licensee of Chityala No.3 for the year 2005-2006 successfully managed to see that tenders are filed by his members of own group and no one-else to Chityala No.1, Chityala No.3 and Chityala No.5 and wanted to have no tender for Chityala No.2 and Chityala No.4, leaving (2) shops without any tender and undisposed for the lease period 2006-08.

Therefore, keeping above said information, in terms of public revenue and public interest, it is decided to reject highest tender filed in respect of Chityala No.5 (Rs.19.00 lakhs), such that supporters of cartel formation will not have and cannot have a final say in disposal of A4 liquor shops, which is a prerogative of the Government.

Therefore, the said entire proceedings of rejection of highest tender has been announced by me through mike in the auction hall.

Sd/-

Auctioning authority & Dist. Collector,

Nalgonda.

As noted above, there can be no dispute about the power conferred on the auctioning authority under sub-rule (7) of Rule 14 to reject any tender when he was satisfied that there was collusion among the tenderers who participated in the auction for the lease of any shop, provided the reasons thereof are recorded.

In the case on hand, the third respondent on the day of the opening of the tenders had clearly recorded that a cartel was formed among the existing licensees who again submitted tenders for shop Nos.1, 3 and 5 and their supporters who had successfully managed to see that no tenders were filed in respect of the shop Nos.2 and 4 and so far as the shop Nos.1, 3 and 5 are concerned tenders were filed by the members of their own group. Having recorded such satisfaction, the third respondent rejected the highest tenders received in respect of shop Nos.1, 3 and 5 and announced the same in the auction hall itself. It is also clear that the proceedings were communicated to the petitioners/highest bidders who refused to receive the same.

Thus, it is clear that the procedure adopted by the respondents was strictly in accordance with the statutory provisions and cannot be held to be either illegal or arbitrary. The action of the 3rd respondent in issuing a fresh notification is also in accordance with the provision of sub-rule (8) of Rule 14.

At any rate, in the absence of any allegation of mala fide action or arbitrariness or favouritism against any of the respondents and particularly when the action of the respondents cannot be held to be in violation of any statutory provision, the judicial review under Article 226 of the Constitution of India is unwarranted.

Viewed from any angle, the Writ Petitions are misconceived and without any substance. Accordingly, the same are dismissed. No costs.

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G. ROHINI, J.

Dt. 13-6-2006

gbs

Note:- Office is directed to put up a copy

of this common order in W.P.Nos.11319 and

11345 of 2006, after signatures of the

Hon'ble Judge.